

## Department of Energy

## 970.4402-4

continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards;

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid; and

(9) Maximization of opportunities for small business, HUBZone small business, small disadvantaged business, and woman-owned small business concerns to participate in contract performance.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36374, July 22, 2009]

### 970.4402-3 Purchasing from contractor-affiliated sources.

(a) A management and operating contractor may purchase from sources affiliated with the contractor (any division, subsidiary, or affiliate of the contractor or its parent company) in the same manner as from other sources, provided—

(1) The management and operating contractor's purchasing function is independent of the proposed contractor-affiliated source;

(2) The same terms and conditions would apply if the purchase were from a third party;

(3) Award is made in accordance with policies and procedures designed to permit effective competition which have been approved by the contracting officer. (This requirement for competition shall not preclude acquisition of technical services from contractor-affiliated entities where those entities have a special expertise, and the basis therefore is documented.); and

(4) The award is legally enforceable where the entities are separately incorporated.

(b) Subcontracts for performance of contract work itself (as distinguished from the purchase of supplies and services needed in connection with the performance of work) require DOE authorization and may involve an adjustment of the contractor's fee, if any. If the management and operating contractor seeks authorization to have some part of the contract work performed by a contractor-affiliated source, and that contractor's performance of that work

was a factor in the negotiated fee, DOE approval would normally require—

(1) That the contractor-affiliated source perform such work without fee or profit; or

(2) An equitable downward adjustment to the management and operating contractor's fee, if any.

(c) Determination on cost of money allowance as prescribed at 48 CFR 31.225-10 shall be treated as follows:

(1) When a purchase from a contractor-affiliated source results from competition and is in accord with provisions and conditions of paragraphs (a)(1) through (a)(4) of this subsection, the contractor-affiliated source may include cost of money as an allowable element of the costs of its goods or services supplied to the contractor; provided—

(i) The purchase is based on cost as set forth in 48 CFR 31.205-26(e); and

(ii) The cost of money amount is computed in accordance with 48 CFR 31.205-10 and related procedures (see 970.30).

(2) When a purchase from a contractor-affiliated source is made non-competitively, cost of money shall not be considered an allowable element of the cost of the contractor-affiliated source purchase.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36374, July 22, 2009]

### 970.4402-4 Nuclear material transfers.

(a) Management and operating contractors, in preparing subcontracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such subcontract or agreement contains a—

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision for the use of an independent third party as an umpire to settle unresolved differences in the analytical samples; and

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(5) Provision specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36374, July 22, 2009]

#### **970.4403 Contract clause.**

The contracting officer shall insert the clause at 970.5244-1, Contractor Purchasing System, in all management and operating contracts.

### **Subpart 970.45—Government Property**

#### **970.4501 General.**

##### **970.4501-1 Contract clause.**

(a) The contracting officer shall insert the clause at 970.5245-1, Property, in management and operating contracts. Paragraph (f)(1)(i)(c) of the clause applies to a non-profit contractor only to the extent specifically provided in the individual contract. Specific managerial personnel may be listed in paragraph (j), provided their listing is consistent with the clause and the DEAR.

(b) The contracting officer shall insert the basic clause with its Alternate I in contracts with nonprofit contractors.

### **Subpart 970.49—Termination of Contracts**

#### **970.4905 Contract termination clause.**

##### **970.4905-1 Termination for convenience of the government and default.**

(a) The contracting officer shall include the clause at 48 CFR 52.249-6, Termination (Cost Reimbursement), as modified pursuant to paragraph (b) of this subsection, in all cost-reimbursement management and operating contracts, regardless of whether the contract is for production, or research and development with an educational or nonprofit institution.

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(b) The contracting officer shall modify paragraph (i) of the clause to insert “as supplemented in subpart 970.31 of the Department of Energy Acquisition Regulation,” after the phrase, “part 31 of the Federal Acquisition Regulation.”

### **Subpart 970.50—Extraordinary Contractual Actions and the Safety Act**

#### **970.5001 Residual powers.**

##### **970.5001-4 Contract clause.**

When use of the clause at 48 CFR 52.250-1, Indemnification Under Public Law 85-804, Alternate 1 is appropriate, the contracting officer may substitute the words “Obligation of funds” for the words “Limitation of Cost or Limitation of Funds.”

[65 FR 81009, Dec. 22, 2000. Redesignated and amended at 74 FR 36374, July 22, 2009]

#### **970.5070 Indemnification.**

##### **970.5070-1 Scope and applicability.**

(a) Section 170d. of the Atomic Energy Act of 1954, as amended, requires Department of Energy (DOE) to enter into agreements of indemnity with contractors whose work involves the risk of public liability for the occurrence of a nuclear incident or precautionary evacuation.

(b) Details of such indemnification are discussed at subpart 950.70.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36374, July 22, 2009]

##### **970.5070-2 General.**

DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for contractor casualty insurance programs, DOE contractors may be—

(a) Permitted to furnish financial protection to themselves; or